

AMENDED IN SENATE JULY 23, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 568**

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**Introduced by Assembly Member Lieu**

February 25, 2009

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An act to add and repeal Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 of the Business and Professions Code, ~~and to amend Section 1161 of the Code of Civil Procedure~~, relating to counterfeit goods.

### LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Lieu. Counterfeit goods: ~~unlawful detainer~~. *abatement*.

Existing law provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, giving away, or manufacturing controlled substances, and every building or place wherein or upon which these acts take place, is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance. Existing law authorizes a district attorney, county counsel, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

This bill would provide that ~~every~~ *if a person is convicted of a specified crime, then a* nonresidential building or place used by *that*

*person* for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods, defined to include counterfeit of a registered mark or any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose specified information, ~~is shall be deemed~~ a nuisance that shall be enjoined, abated, and prevented ~~against the person convicted~~, whether it is a public or private nuisance. The bill would authorize a district attorney, ~~county counsel~~, city prosecutor, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the nonresidential building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance. The bill would provide that a violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a specified fine and imprisonment. ~~The bill would require the district attorney, city attorney, or city prosecutor to report, by October 1, 2013, to the Senate and Assembly Committees on Judiciary on their use of these abatement provisions and their effectiveness. The bill would make changes to related provisions.~~ The bill's provisions would become inoperative on January 1, 2015.

Because this bill would provide for criminal penalties *and require a report to the Legislature*, it would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 4 (commencing with Section 17800) is added to Part 3 of Division 7 of the Business and Professions Code, to read:

CHAPTER 4. COUNTERFEITING ABATEMENT

~~17800. (a) Every nonresidential building or place used for the~~  
17800. *If there is a conviction for a violation of Section 653w or paragraph (2) of subdivision (a) of Section 350 of the Penal Code by any person, then a nonresidential building or place used by that person for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any counterfeit goods is shall be deemed a nuisance which shall be enjoined, abated, and prevented against the person convicted, and for which damages may be recovered, whether it is a public or private nuisance.*

(b) As used in this chapter, “counterfeit goods” means (1) any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office or (2) any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose the information as specified in subdivision (a) of Section 653w of the Penal Code.

~~17801. Whenever there is reason to believe that~~ *If a nuisance as described in Section 17800 is kept, maintained, or exists in any county, the district attorney of the county, the county counsel, or the city prosecutor or city attorney of any incorporated city or of any city and county, in the name of the people, may, or any citizen may, or any citizen* of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the nonresidential building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

~~17802. (a) To effectuate the purposes of this chapter, the district attorney, the county counsel, city prosecutor, or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or~~

1 ~~illegal purpose provisions of subdivision 4 of Section 1161 of the~~  
2 ~~Code of Civil Procedure, with respect to a counterfeit goods~~  
3 ~~purpose. In filing this action, which shall be based upon an arrest~~  
4 ~~report or on another action or report by a regulatory or law~~  
5 ~~enforcement agency, the district attorney, county counsel, city~~  
6 ~~prosecutor, or city attorney shall utilize the procedures set forth~~  
7 ~~in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3~~  
8 ~~of the Code of Civil Procedure, except that in cases filed under~~  
9 ~~this section, the following also shall apply:~~

10 ~~(1) (A) Prior to filing an action pursuant to this section, the~~  
11 ~~district attorney, county counsel, city prosecutor, or city attorney~~  
12 ~~shall give 30 calendar days' written notice to the owner, requiring~~  
13 ~~the owner to file an action for the removal of the person who is in~~  
14 ~~violation of the nuisance or illegal purpose provisions of~~  
15 ~~subdivision 4 of Section 1161 of the Code of Civil Procedure with~~  
16 ~~respect to a counterfeit goods purpose.~~

17 ~~(B) This notice shall include sufficient documentation~~  
18 ~~establishing a violation of the nuisance or illegal purpose provisions~~  
19 ~~of subdivision 4 of Section 1161 of the Code of Civil Procedure~~  
20 ~~and shall be served upon the owner and the tenant in accordance~~  
21 ~~with subdivision (c).~~

22 ~~(C) The notice to the tenant shall also include on the bottom of~~  
23 ~~its front page, in at least 14-point bold type, the following:~~

24 ~~—~~

25 ~~“Notice to Tenant: This notice is not a notice of eviction.~~

26 ~~—~~

27 ~~—However, you should know that an eviction action may soon~~  
28 ~~be filed in court against you for suspected counterfeit goods~~  
29 ~~activity, as described above.~~

30 ~~—You should call (insert name and telephone number of the~~  
31 ~~district attorney, county counsel, city prosecutor, or city~~  
32 ~~attorney pursuing the action) or legal aid to stop the eviction~~  
33 ~~action if any of the following is applicable:~~

34 ~~—(i) You are not the person named in this notice.~~

35 ~~—(ii) The person named in the notice does not occupy the~~  
36 ~~premises with you.~~

37 ~~—(iii) The person named in the notice has permanently moved.~~

38 ~~—(iv) You do not know the person named in the notice.~~

39 ~~—(v) You have any other legal defense or legal reason to stop~~  
40 ~~the eviction action.~~

1 —A list of legal assistance providers is attached to this notice.  
2 Some provide free legal help if you are eligible.”

3 —

4 (D) The owner shall, within 30 calendar days of the mailing of  
5 the written notice, either provide the district attorney, county  
6 counsel, city prosecutor, or city attorney with all relevant  
7 information pertaining to the unlawful detainer case, or provide a  
8 written explanation setting forth any safety-related reasons for  
9 noncompliance, and an assignment to the district attorney, county  
10 counsel, city prosecutor, or city attorney of the right to bring an  
11 unlawful detainer action against the tenant.

12 (E) The assignment shall be on a form provided by the district  
13 attorney, county counsel, city prosecutor, or city attorney and may  
14 contain a provision for costs of investigation, discovery, and  
15 reasonable attorney’s fees, in an amount not to exceed six hundred  
16 dollars (\$600).

17 (F) If the district attorney, county counsel, city prosecutor, or  
18 city attorney accepts the assignment of the right of the owner to  
19 bring the unlawful detainer action, the owner shall retain all other  
20 rights and duties, including the handling of the tenant’s personal  
21 property, following issuance of the writ of possession and its  
22 delivery to and execution by the appropriate agency.

23 (2) Upon the failure of the owner to file an action pursuant to  
24 this section, or to respond to the district attorney, county counsel,  
25 city prosecutor, or city attorney as provided in paragraph (1), or  
26 having filed an action, if the owner fails to prosecute it diligently  
27 and in good faith, the district attorney, county counsel, city  
28 prosecutor, or city attorney may file and prosecute the action and  
29 join the owner as a defendant in the action. This action shall have  
30 precedence over any similar proceeding thereafter brought by the  
31 owner, or to one previously brought by the owner and not  
32 prosecuted diligently and in good faith. Service of the summons  
33 and complaint upon the defendant owner shall be in accordance  
34 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the  
35 Code of Civil Procedure.

36 (3) If a jury or court finds the defendant tenant guilty of unlawful  
37 detainer in a case filed pursuant to paragraph (2), the district  
38 attorney, county counsel, city prosecutor, or city attorney may be  
39 awarded costs, including the costs of investigation and discovery  
40 and reasonable attorney’s fees. These costs shall be assessed against

1 the defendant owner, to whom notice was directed pursuant to  
2 paragraph (1), and once an abstract of judgment is recorded, it  
3 shall constitute a lien on the subject real property.

4 (4) Nothing in this chapter shall prevent a local governing body  
5 from adopting and enforcing laws, consistent with this chapter,  
6 relating to counterfeit goods enforcement. Where local laws  
7 duplicate or supplement this chapter, this chapter shall be construed  
8 as providing alternative remedies and not preempting the field.

9 (5) Nothing in this chapter shall prevent a tenant from receiving  
10 relief against a forfeiture of a lease pursuant to Section 1179 of  
11 the Code of Civil Procedure.

12 (b) In any proceeding brought under this section, the court may,  
13 upon a showing of good cause, issue a partial eviction ordering  
14 the removal of any person, including, but not limited to, any person  
15 occupying the premises with the tenant, if the court finds that the  
16 person has engaged in the activities described in subdivision (a).  
17 Persons removed pursuant to this section may be permanently  
18 barred from returning to or reentering any portion of the entire  
19 premises. The court may further order as an express condition of  
20 the tenancy that the remaining tenants shall not give permission  
21 to or invite any person who has been removed pursuant to this  
22 subdivision to return to or reenter any portion of the entire  
23 premises.

24 (c) For the purposes of this section, “counterfeit goods purpose”  
25 means willfully manufacturing, intentionally selling, or knowingly  
26 possessing for sale (1) any counterfeit of a mark registered with  
27 the Secretary of State or registered on the Principal Register of the  
28 United States Patent and Trademark Office or (2) any recording  
29 or audiovisual work, the cover, box, jacket, or label of which does  
30 not disclose the information as specified in subdivision (a) of  
31 Section 653w of the Penal Code.

32 (d) Notwithstanding subdivision (b) of Section 68097.2 of the  
33 Government Code, a public entity may waive all or part of the  
34 costs incurred in furnishing the testimony of a peace officer in an  
35 unlawful detainer action brought pursuant to this section.

36 (e) The notice and documentation described in paragraph (1)  
37 of subdivision (a) shall be given in writing and may be given either  
38 by personal delivery or by deposit in the United States mail in a  
39 sealed envelope, postage prepaid, addressed to the owner at the  
40 address known to the public entity giving the notice, or as shown

1 on the last equalized assessment roll, if not known. Separate notice  
2 of not less than 30 calendar days and documentation shall be  
3 provided to the tenant in accordance with this subdivision. Service  
4 by mail shall be deemed to be completed at the time of deposit in  
5 the United States mail. Proof of giving the notice may be made by  
6 a declaration signed under penalty of perjury by any employee of  
7 the public entity that shows service in conformity with this section.

8 ~~17803. For purposes of this chapter, an action to abate a~~  
9 ~~nuisance may be taken by the district attorney of the county, the~~  
10 ~~county counsel, the city attorney, or the city prosecutor of the city~~  
11 ~~or city and county within which the nuisance exists, is kept, or is~~  
12 ~~maintained. An action by a county counsel, city attorney, or city~~  
13 ~~prosecutor shall be accorded the same precedence as an action~~  
14 ~~maintained by the district attorney of the county.~~

15 *17803. For purposes of this chapter, an action to abate a*  
16 *nuisance, as described in Section 17800, may be taken by the city*  
17 *attorney or the city prosecutor of the city or city and county within*  
18 *which the nuisance exists, is kept, or is maintained. An owner shall*  
19 *be provided with 30 days' notice prior to the filing of an action to*  
20 *abate a nuisance. An action by a city attorney or city prosecutor*  
21 *shall be accorded the same precedence as an action maintained*  
22 *by the district attorney.*

23 ~~17804. Unless filed by the district attorney, county counsel,~~  
24 ~~city prosecutor, or city attorney, the complaint in the action shall~~  
25 ~~be verified.~~

26 17805. (a) If the existence of the nuisance is shown in the  
27 action to the satisfaction of the court or judge, either by verified  
28 complaint or affidavit, the court or judge shall allow a temporary  
29 restraining order or injunction to abate and prevent the continuance  
30 or recurrence of the nuisance.

31 (b) A temporary restraining order or injunction may enjoin  
32 subsequent owners, commercial lessees, or agents who acquire the  
33 nonresidential building or place where the nuisance exists with  
34 notice of the temporary restraining order or injunction, specifying  
35 that the owner of the property subject to the temporary restraining  
36 order or injunction shall notify any prospective purchaser,  
37 commercial lessee, or other successor in interest of the existence  
38 of the order or injunction, and of its application to successors in  
39 interest, prior to entering into any agreement to sell or lease the

1 property. The temporary restraining order or injunction shall not  
2 constitute a title defect, lien, or encumbrance on the real property.

3 17806. (a) At the time of application for issuance of a  
4 temporary restraining order or injunction pursuant to Section  
5 17805, if proof of the existence of the nuisance depends, in whole  
6 or part, upon the affidavits of witnesses who are not peace officers,  
7 upon a showing of prior threats of violence or acts of violence by  
8 any defendant or other person, the court may issue orders to protect  
9 those witnesses, including, but not limited to, nondisclosure of the  
10 name, address, or any other information which may identify those  
11 witnesses.

12 (b) A temporary restraining order or injunction issued pursuant  
13 to Section 17805 may include closure of the premises pending trial  
14 when a prior order or injunction does not result in the abatement  
15 of the nuisance. The duration of the order or injunction shall be  
16 within the court's discretion. In no event shall the total period of  
17 closure pending trial exceed one year. Prior to ruling on a request  
18 for closure, the court may order that some or all of the rent  
19 payments owing to the defendant be placed in an escrow account  
20 for a period of up to 90 days or until the nuisance is abated. If the  
21 court subsequently orders a closure of the premises, the money in  
22 the escrow account shall be used to pay for relocation assistance  
23 pursuant to subdivision (d). In ruling upon a request for closure,  
24 whether for a defined or undefined duration, the court shall consider  
25 all of the following factors:

26 (1) The extent and duration of the nuisance at the time of the  
27 request.

28 (2) Prior efforts by the defendant to comply with previous court  
29 orders to abate the nuisance.

30 (3) The nature and extent of any effect that the nuisance has  
31 upon other persons, such as tenants or businesses.

32 (4) Any effect of prior orders placing displaced occupants' rent  
33 payments into an escrow account upon the defendant's efforts to  
34 abate the nuisance.

35 (5) The effect of granting the request upon any occupant of the  
36 premises who is not named in the action, including the availability  
37 of an alternative building or relocation assistance, the pendency  
38 of any action to evict an occupant, and any evidence of  
39 participation by an occupant in the nuisance activity.



1 (c) In making an order of closure pursuant to this section, the  
2 court may order the premises vacated and may issue any other  
3 orders necessary to effectuate the closure. However, all tenants  
4 who may be affected by the order shall be provided reasonable  
5 notice and an opportunity to be heard at all hearings regarding the  
6 closure request prior to the issuance of any order.

7 (d) In making an order of closure pursuant to this section, the  
8 court shall order the defendant to provide relocation assistance to  
9 any tenant ordered to vacate the premises, provided the court  
10 determines that the tenant was not actively involved in the nuisance  
11 activity. The relocation assistance ordered to be paid by the  
12 defendant shall be in the amount necessary to cover moving costs,  
13 security deposits for utilities and for a comparable building,  
14 adjustment in any lost rent, and any other reasonable expenses the  
15 court may deem fair and reasonable as a result of the court's order.

16 (e) At the hearing to order closure pursuant to this section, the  
17 court may make the following orders with respect to any displaced  
18 tenant not actively involved in the nuisance:

19 (1) Priority for senior citizens, physically handicapped persons,  
20 or persons otherwise suffering from a permanent or temporary  
21 disability for claims against money for relocation assistance.

22 (2) Order the local agency seeking closure pursuant to this  
23 section to make reasonable attempts to seek additional sources of  
24 funds for relocation assistance to displaced tenants, if deemed  
25 necessary.

26 (3) Appoint a receiver to oversee the disbursement of relocation  
27 assistance funds, whose services shall be paid from the escrow  
28 fund.

29 (4) Where a defendant has paid relocation assistance pursuant  
30 to subdivision (d), the escrow account under subdivision (b) may  
31 be released to the defendant and no appointment under paragraph  
32 (3) shall be made.

33 (f) (1) The remedies set forth in this section shall be in addition  
34 to any other existing remedies for nuisance abatement actions,  
35 including, but not limited to, the following:

36 (A) Capital improvements to the property, such as security gates.

37 (B) Improved interior or exterior lighting.

38 (C) Security guards.

39 (D) Posting of signs.

1 (E) Owner membership in neighborhood or local merchants'  
2 associations.

3 (F) Attending property management training programs.

4 (G) Making cosmetic improvements to the property.

5 (H) Requiring the owner or person in control of the property to  
6 occupy the property until the nuisance is abated. The order shall  
7 specify the number of hours per day or per week the owner or  
8 person in control of the property must be physically present in the  
9 property. In determining this amount, the court shall consider the  
10 nature and severity of the nuisance.

11 (2) At all stages of an action brought pursuant to this chapter,  
12 the court has equitable powers to order steps necessary to remedy  
13 the problem and enhance the abatement process.

14 17807. On granting the temporary writ, the court or judge shall  
15 require an undertaking on the part of the applicant to the effect  
16 that the applicant will pay to the defendant enjoined any damages,  
17 not exceeding an amount to be specified, as the defendant sustains  
18 by reason of the injunction if the court finally decides that the  
19 applicant was not entitled to the injunction. ~~This bond requirement~~  
20 ~~shall not apply to any action brought by the district attorney, county~~  
21 ~~counsel, city attorney, or city prosecutor.~~

22 17808. The action shall have precedence over all other actions,  
23 except criminal proceedings, election contests, hearings on  
24 injunctions, and actions to forfeit vehicles under Division 10  
25 (commencing with Section 11000) of the Health and Safety Code.

26 17809. In any action for abatement instituted pursuant to this  
27 chapter, all evidence otherwise authorized by law, including  
28 evidence of reputation in a community, as provided in the Evidence  
29 Code, shall be admissible to prove the existence of a nuisance.

30 17810. If the complaint is filed by a citizen, it shall not be  
31 dismissed by him or her for want of prosecution except upon a  
32 sworn statement made by him or her and his or her attorney, setting  
33 forth the reasons why the action should be dismissed, and by  
34 dismissal ordered by the court.

35 17811. In case of failure to prosecute the action with reasonable  
36 diligence, or at the request of the plaintiff, the court, in its  
37 discretion, may substitute any other citizen consenting thereto for  
38 the plaintiff.

1 17812. If the action is brought by a citizen and the court finds  
2 there was no reasonable ground or cause for the action, the costs  
3 shall be taxed against him or her.

4 17813. If the existence of the nuisance is established in the  
5 action, an order of abatement shall be entered as part of the  
6 judgment in the case, and plaintiff's costs in the action are a lien  
7 upon the nonresidential building or place. The lien is enforceable  
8 and collectible by execution issued by order of the court.

9 17814. A violation or disobedience of the injunction or order  
10 for abatement is punishable as a contempt of court by a fine of not  
11 less than five hundred dollars (\$500) nor more than ten thousand  
12 dollars (\$10,000), or by imprisonment in the county jail for not  
13 less than one nor more than six months, or by both.

14 A contempt may be based on a violation of any court order,  
15 including failure to pay relocation assistance. Notwithstanding any  
16 other provision of law, any fines assessed for contempt shall first  
17 be held by the court and applied to satisfaction of the court's order  
18 for relocation assistance pursuant to subdivision (d) of Section  
19 17806.

20 Evidence concerning the duration and repetitive nature of the  
21 violations shall be considered by the court in determining the  
22 contempt penalties.

23 17815. (a) If the existence of the nuisance is established in the  
24 action, an order of abatement shall be entered as a part of the  
25 judgment, which order shall direct the removal from the  
26 nonresidential building or place of all fixtures, musical instruments,  
27 and other movable property used in conducting, maintaining,  
28 aiding, or abetting the nuisance and shall direct their sale in the  
29 manner provided for the sale of chattels under execution.

30 (b) (1) The order shall provide for the effectual closing of the  
31 nonresidential building or place against its use for any purpose,  
32 and for keeping it enclosed for a period of *up to* one year. This  
33 subdivision is intended to give priority to closure. Any alternative  
34 to closure may be considered only as provided in this section.

35 (2) In addition, the court may assess a civil penalty not to exceed  
36 twenty-five thousand dollars (\$25,000) against any or all of the  
37 defendants, based upon the severity of the nuisance and its duration.

38 (3) One-half of the civil penalties collected pursuant to this  
39 section shall be deposited in the Restitution Fund in the State  
40 Treasury, the proceeds of which shall be available only upon

1 appropriation by the Legislature to indemnify persons filing claims  
2 pursuant to Article 1 (commencing with Section 13959) of Chapter  
3 5 of Part 4 of Division 3 of Title 2 of the Government Code, and  
4 one-half of the civil penalties collected shall be paid to the city in  
5 which the judgment was entered, if the action was brought by the  
6 city attorney or city prosecutor. If the action was brought by a  
7 district attorney ~~or county counsel~~, one-half of the civil penalties  
8 collected shall be paid to the treasurer of the county in which the  
9 judgment was entered.

10 (c) (1) If the court finds that any vacancy resulting from closure  
11 of the nonresidential building or place may create a nuisance or  
12 that closure is otherwise harmful to the community, in lieu of  
13 ordering the nonresidential building or place closed, the court may  
14 order the person who is responsible for the existence of the  
15 nuisance, or the person who knowingly permits the manufacture  
16 or sale of counterfeit goods, to pay damages in an amount equal  
17 to the fair market rental value of the nonresidential building or  
18 place for one year to the city or county in whose jurisdiction the  
19 nuisance is located for the purpose of carrying out counterfeit  
20 goods abatement programs. If awarded to a city, eligible programs  
21 may include those developed as a result of cooperative programs  
22 among schools, community agencies, and the local law enforcement  
23 agency. These funds shall not be used to supplant existing city,  
24 county, state, or federal resources used for counterfeit goods  
25 enforcement or education programs.

26 (2) For purposes of this subdivision, the actual amount of rent  
27 being received for the rental of the nonresidential building or place,  
28 or the existence of any vacancy therein, may be considered, but  
29 shall not be the sole determinant of the fair market rental value.  
30 Expert testimony may be used to determine the fair market rental  
31 value.

32 17816. While the order of abatement remains in effect, the  
33 nonresidential building or place is in the custody of the court.

34 17817. For removing and selling the movable property, the  
35 officer is entitled to charge and receive the same fees as he or she  
36 would for levying upon and selling like property on execution;  
37 and for closing the premises and keeping them closed, a reasonable  
38 sum shall be allowed by the court.

39 17818. The proceeds of the sale of the movable property shall  
40 be applied as follows:

1 (a) To the fees and costs of the removal and sale.

2 (b) To the allowances and costs of closing and keeping closed  
3 the nonresidential building or place.

4 (c) To the payment of the plaintiff's costs in the action.

5 (d) The balance, if any, to the owner of the property.

6 17819. If the proceeds of the sale of the movable property do  
7 not fully discharge all of the costs, fees, and allowances, the  
8 building and place shall then also be sold under execution issued  
9 upon the order of the court or judge and the proceeds of the sale  
10 shall be applied in like manner.

11 17820. (a) If the owner of the nonresidential building or place  
12 has not been guilty of any contempt of court in the proceedings,  
13 and appears and pays all costs, fees, and allowances that are a lien  
14 on the nonresidential building or place and files a bond in the full  
15 value of the property conditioned that the owner will immediately  
16 abate any nuisance that may exist at the nonresidential building  
17 or place and prevent it from being established or kept thereat within  
18 a period of one year thereafter, the court or judge may, if satisfied  
19 of the owner's good faith, order the nonresidential building or  
20 place to be delivered to the owner, and the order of abatement  
21 should be canceled so far as it may relate to the property.

22 (b) The release of property under this chapter does not release  
23 it from any judgment, lien, penalty, or liability to which it may be  
24 subject.

25 17821. ~~Whenever~~ If the owner of a nonresidential building or  
26 place upon which the act or acts constituting the contempt have  
27 been committed, or the owner of any interest therein, has been  
28 guilty of a contempt of court, and fined in any proceedings under  
29 this chapter, the fine is a lien upon the nonresidential building or  
30 place to the extent of his or her interest in it. The lien is enforceable  
31 and collectible by execution issued by order of the court.

32 17822. *The district attorney, city attorney, or city prosecutor*  
33 *shall report to the Senate and Assembly Committees on Judiciary,*  
34 *by October 1, 2013, on their use of the provisions of this chapter*  
35 *and its effectiveness. The report shall include, but not be limited*  
36 *to, all of the following:*

37 (a) *The frequency of use of the nuisance abatement provisions*  
38 *as well as statistics on whether the use of the abatement correlates*  
39 *with a decrease in the use of criminal penalties.*

1     (b) Any statistics or information concerning the impact of the  
2     use of these provisions on counterfeiting overall, both in the  
3     relevant county or city and overall.

4     ~~17822.~~

5     17823. This chapter shall remain in effect only until January  
6     1, 2015, and as of that date is repealed, unless a later enacted  
7     statute, that is enacted before January 1, 2015, deletes or extends  
8     that date.

9     SEC. 2. No reimbursement is required by this act pursuant to  
10    Section 6 of Article XIII B of the California Constitution for certain  
11    costs that may be incurred by a local agency or school district  
12    because, in that regard, this act creates a new crime or infraction,  
13    eliminates a crime or infraction, or changes the penalty for a crime  
14    or infraction, within the meaning of Section 17556 of the  
15    Government Code, or changes the definition of a crime within the  
16    meaning of Section 6 of Article XIII B of the California  
17    Constitution.

18    However, if the Commission on State Mandates determines that  
19    this act contains other costs mandated by the state, reimbursement  
20    to local agencies and school districts for those costs shall be made  
21    pursuant to Part 7 (commencing with Section 17500) of Division  
22    4 of Title 2 of the Government Code.

23    ~~SEC. 2. Section 1161 of the Code of Civil Procedure, as~~  
24    ~~amended by Section 2 of Chapter 440 of the Statutes of 2008, is~~  
25    ~~amended to read:~~

26    ~~1161. A tenant of real property, for a term less than life, or the~~  
27    ~~executor or administrator of his or her estate heretofore qualified~~  
28    ~~and now acting or hereafter to be qualified and act, is guilty of~~  
29    ~~unlawful detainer:~~

30    ~~1. When he or she continues in possession, in person or by~~  
31    ~~subtenant, of the property, or any part thereof, after the expiration~~  
32    ~~of the term for which it is let to him or her; provided the expiration~~  
33    ~~is of a nondefault nature however brought about without the~~  
34    ~~permission of his or her landlord, or the successor in estate of his~~  
35    ~~or her landlord, if applicable; including the case where the person~~  
36    ~~to be removed became the occupant of the premises as a servant,~~  
37    ~~employee, agent, or licensee and the relation of master and servant,~~  
38    ~~or employer and employee, or principal and agent, or licensor and~~  
39    ~~licensee, has been lawfully terminated or the time fixed for~~  
40    ~~occupancy by the agreement between the parties has expired; but~~

1 nothing in this subdivision shall be construed as preventing the  
2 removal of the occupant in any other lawful manner; but in case  
3 of a tenancy at will, it must first be terminated by notice, as  
4 prescribed in the Civil Code.

5 2. When he or she continues in possession, in person or by  
6 subtenant, without the permission of his or her landlord, or the  
7 successor in estate of his or her landlord, if applicable, after default  
8 in the payment of rent, pursuant to the lease or agreement under  
9 which the property is held, and three days' notice, in writing,  
10 requiring its payment, stating the amount which is due, the name,  
11 telephone number, and address of the person to whom the rent  
12 payment shall be made, and, if payment may be made personally,  
13 the usual days and hours that person will be available to receive  
14 the payment (provided that, if the address does not allow for  
15 personal delivery, then it shall be conclusively presumed that upon  
16 the mailing of any rent or notice to the owner by the tenant to the  
17 name and address provided, the notice or rent is deemed received  
18 by the owner on the date posted, if the tenant can show proof of  
19 mailing to the name and address provided by the owner), or the  
20 number of an account in a financial institution into which the rental  
21 payment may be made, and the name and street address of the  
22 institution (provided that the institution is located within five miles  
23 of the rental property), or if an electronic funds transfer procedure  
24 has been previously established, that payment may be made  
25 pursuant to that procedure, or possession of the property, shall  
26 have been served upon him or her and if there is a subtenant in  
27 actual occupation of the premises, also upon the subtenant.

28 The notice may be served at any time within one year after the  
29 rent becomes due. In all cases of tenancy upon agricultural lands,  
30 where the tenant has held over and retained possession for more  
31 than 60 days after the expiration of the term without any demand  
32 of possession or notice to quit by the landlord or the successor in  
33 estate of his or her landlord, if applicable, he or she shall be deemed  
34 to be holding by permission of the landlord or successor in estate  
35 of his or her landlord, if applicable, and shall be entitled to hold  
36 under the terms of the lease for another full year, and shall not be  
37 guilty of an unlawful detainer during that year, and the holding  
38 over for that period shall be taken and construed as a consent on  
39 the part of a tenant to hold for another year.

1     ~~3. When he or she continues in possession, in person or by~~  
2     ~~subtenant, after a neglect or failure to perform other conditions or~~  
3     ~~covenants of the lease or agreement under which the property is~~  
4     ~~held, including any covenant not to assign or sublet, than the one~~  
5     ~~for the payment of rent, and three days' notice, in writing, requiring~~  
6     ~~the performance of such conditions or covenants, or the possession~~  
7     ~~of the property, shall have been served upon him or her, and if~~  
8     ~~there is a subtenant in actual occupation of the premises, also, upon~~  
9     ~~the subtenant. Within three days after the service of the notice, the~~  
10    ~~tenant, or any subtenant in actual occupation of the premises, or~~  
11    ~~any mortgagee of the term, or other person interested in its~~  
12    ~~continuance, may perform the conditions or covenants of the lease~~  
13    ~~or pay the stipulated rent, as the case may be, and thereby save the~~  
14    ~~lease from forfeiture; provided, if the conditions and covenants of~~  
15    ~~the lease, violated by the lessee, cannot afterward be performed,~~  
16    ~~then no notice, as last prescribed herein, need be given to the lessee~~  
17    ~~or his or her subtenant, demanding the performance of the violated~~  
18    ~~conditions or covenants of the lease.~~

19    ~~A tenant may take proceedings, similar to those prescribed in~~  
20    ~~this chapter, to obtain possession of the premises let to a subtenant~~  
21    ~~or held by a servant, employee, agent, or licensee, in case of his~~  
22    ~~or her unlawful detention of the premises underlet to him or her~~  
23    ~~or held by him or her.~~

24    ~~4. Any tenant, subtenant, or executor or administrator of his or~~  
25    ~~her estate heretofore qualified and now acting, or hereafter to be~~  
26    ~~qualified and act, assigning or subletting or committing waste upon~~  
27    ~~the demised premises, contrary to the conditions or covenants of~~  
28    ~~his or her lease, or maintaining, committing, or permitting the~~  
29    ~~maintenance or commission of a nuisance upon the demised~~  
30    ~~premises or using the premises for an unlawful purpose, thereby~~  
31    ~~terminates the lease, and the landlord, or his or her successor in~~  
32    ~~estate, shall upon service of three days' notice to quit upon the~~  
33    ~~person or persons in possession, be entitled to restitution of~~  
34    ~~possession of the demised premises under this chapter. For~~  
35    ~~purposes of this subdivision, a person who commits an offense~~  
36    ~~included in subdivision (c) of Section 11571.1 of the Health and~~  
37    ~~Safety Code, subdivision (c) of Section 3485 of the Civil Code,~~  
38    ~~or subdivision (c) of Section 17802 of the Business and Professions~~  
39    ~~Code, or uses the premises to further the purpose of that offense~~  
40    ~~shall be deemed to have committed a nuisance upon the premises.~~



1 For purposes of this subdivision, if a person commits an act of  
2 domestic violence as defined in Section 6211 of the Family Code;  
3 sexual assault as defined in Section 261, 261.5, 262, 286, 288a, or  
4 289 of the Penal Code, or stalking as defined in Section 1708.7,  
5 against another tenant or subtenant on the premises there is a  
6 rebuttable presumption affecting the burden of proof that the person  
7 has committed a nuisance upon the premises, provided, however,  
8 that this shall not apply if the victim of the act of domestic violence,  
9 sexual assault, or stalking, or a household member of the victim,  
10 other than the perpetrator, has not vacated the premises. This  
11 subdivision shall not be construed to supersede the provisions of  
12 the Violence Against Women and Department of Justice  
13 Reauthorization Act of 2005 (Public Law 109-162) that permit the  
14 removal from a lease of a tenant who engages in criminal acts of  
15 physical violence against cotenants.

16 5. When he or she gives written notice as provided in Section  
17 1946 of the Civil Code of his or her intention to terminate the  
18 hiring of the real property, or makes a written offer to surrender  
19 which is accepted in writing by the landlord, but fails to deliver  
20 possession at the time specified in that written notice, without the  
21 permission of his or her landlord, or the successor in estate of the  
22 landlord, if applicable.

23 As used in this section, tenant includes any person who hires  
24 real property except those persons whose occupancy is described  
25 in subdivision (b) of Section 1940 of the Civil Code.

26 This section shall remain in effect only until January 1, 2012,  
27 and as of that date is repealed, unless a later enacted statute, that  
28 is enacted before January 1, 2012, deletes or extends that date.

29 SEC. 3. Section 1161 of the Code of Civil Procedure, as added  
30 by Section 3 of Chapter 440 of the Statutes of 2008, is amended  
31 to read:

32 1161. A tenant of real property, for a term less than life, or the  
33 executor or administrator of his or her estate heretofore qualified  
34 and now acting or hereafter to be qualified and act, is guilty of  
35 unlawful detainer:

36 1. When he or she continues in possession, in person or by  
37 subtenant, of the property, or any part thereof, after the expiration  
38 of the term for which it is let to him or her; provided the expiration  
39 is of a nondefault nature however brought about without the  
40 permission of his or her landlord, or the successor in estate of his

1 or her landlord, if applicable; including the case where the person  
2 to be removed became the occupant of the premises as a servant,  
3 employee, agent, or licensee and the relation of master and servant,  
4 or employer and employee, or principal and agent, or licensor and  
5 licensee, has been lawfully terminated or the time fixed for  
6 occupancy by the agreement between the parties has expired; but  
7 nothing in this subdivision shall be construed as preventing the  
8 removal of the occupant in any other lawful manner; but in case  
9 of a tenancy at will, it must first be terminated by notice, as  
10 prescribed in the Civil Code.

11 2. When he or she continues in possession, in person or by  
12 subtenant, without the permission of his or her landlord, or the  
13 successor in estate of his or her landlord, if applicable, after default  
14 in the payment of rent, pursuant to the lease or agreement under  
15 which the property is held, and three days' notice, in writing,  
16 requiring its payment, stating the amount which is due, the name,  
17 telephone number, and address of the person to whom the rent  
18 payment shall be made, and, if payment may be made personally,  
19 the usual days and hours that person will be available to receive  
20 the payment (provided that, if the address does not allow for  
21 personal delivery, then it shall be conclusively presumed that upon  
22 the mailing of any rent or notice to the owner by the tenant to the  
23 name and address provided, the notice or rent is deemed received  
24 by the owner on the date posted, if the tenant can show proof of  
25 mailing to the name and address provided by the owner), or the  
26 number of an account in a financial institution into which the rental  
27 payment may be made, and the name and street address of the  
28 institution (provided that the institution is located within five miles  
29 of the rental property), or if an electronic funds transfer procedure  
30 has been previously established, that payment may be made  
31 pursuant to that procedure, or possession of the property, shall  
32 have been served upon him or her and if there is a subtenant in  
33 actual occupation of the premises, also upon the subtenant.

34 The notice may be served at any time within one year after the  
35 rent becomes due. In all cases of tenancy upon agricultural lands,  
36 where the tenant has held over and retained possession for more  
37 than 60 days after the expiration of the term without any demand  
38 of possession or notice to quit by the landlord or the successor in  
39 estate of his or her landlord, if applicable, he or she shall be deemed  
40 to be holding by permission of the landlord or successor in estate

1 of his or her landlord, if applicable, and shall be entitled to hold  
2 under the terms of the lease for another full year, and shall not be  
3 guilty of an unlawful detainer during that year, and the holding  
4 over for that period shall be taken and construed as a consent on  
5 the part of a tenant to hold for another year.

6 3. ~~When he or she continues in possession, in person or by~~  
7 ~~subtenant, after a neglect or failure to perform other conditions or~~  
8 ~~covenants of the lease or agreement under which the property is~~  
9 ~~held, including any covenant not to assign or sublet, than the one~~  
10 ~~for the payment of rent, and three days' notice, in writing, requiring~~  
11 ~~the performance of such conditions or covenants, or the possession~~  
12 ~~of the property, shall have been served upon him or her, and if~~  
13 ~~there is a subtenant in actual occupation of the premises, also, upon~~  
14 ~~the subtenant. Within three days after the service of the notice, the~~  
15 ~~tenant, or any subtenant in actual occupation of the premises, or~~  
16 ~~any mortgagee of the term, or other person interested in its~~  
17 ~~continuance, may perform the conditions or covenants of the lease~~  
18 ~~or pay the stipulated rent, as the case may be, and thereby save the~~  
19 ~~lease from forfeiture; provided, if the conditions and covenants of~~  
20 ~~the lease, violated by the lessee, cannot afterward be performed,~~  
21 ~~then no notice, as last prescribed herein, need be given to the lessee~~  
22 ~~or his or her subtenant, demanding the performance of the violated~~  
23 ~~conditions or covenants of the lease.~~

24 A tenant may take proceedings, similar to those prescribed in  
25 this chapter, to obtain possession of the premises let to a subtenant  
26 or held by a servant, employee, agent, or licensee, in case of his  
27 or her unlawful detention of the premises underlet to him or her  
28 or held by him or her.

29 4. ~~Any tenant, subtenant, or executor or administrator of his or~~  
30 ~~her estate heretofore qualified and now acting, or hereafter to be~~  
31 ~~qualified and act, assigning or subletting or committing waste upon~~  
32 ~~the demised premises, contrary to the conditions or covenants of~~  
33 ~~his or her lease, or maintaining, committing, or permitting the~~  
34 ~~maintenance or commission of a nuisance upon the demised~~  
35 ~~premises or using the premises for an unlawful purpose, thereby~~  
36 ~~terminates the lease, and the landlord, or his or her successor in~~  
37 ~~estate, shall upon service of three days' notice to quit upon the~~  
38 ~~person or persons in possession, be entitled to restitution of~~  
39 ~~possession of the demised premises under this chapter. For~~  
40 ~~purposes of this subdivision, a person who commits an offense~~

1 included in subdivision (c) of Section 11571.1 of the Health and  
2 Safety Code, subdivision (c) of Section 3485 of the Civil Code,  
3 or subdivision (c) of Section 17802 of the Business and Professions  
4 Code, or uses the premises to further the purpose of that offense  
5 shall be deemed to have committed a nuisance upon the premises.

6 5. ~~When he or she gives written notice as provided in Section~~  
7 ~~1946 of the Civil Code of his or her intention to terminate the~~  
8 ~~hiring of the real property, or makes a written offer to surrender~~  
9 ~~which is accepted in writing by the landlord, but fails to deliver~~  
10 ~~possession at the time specified in that written notice, without the~~  
11 ~~permission of his or her landlord, or the successor in estate of the~~  
12 ~~landlord, if applicable.~~

13 As used in this section, tenant includes any person who hires  
14 real property except those persons whose occupancy is described  
15 in subdivision (b) of Section 1940 of the Civil Code.

16 This section shall become operative on January 1, 2012.

17 SEC. 4. ~~No reimbursement is required by this act pursuant to~~  
18 ~~Section 6 of Article XIII B of the California Constitution because~~  
19 ~~the only costs that may be incurred by a local agency or school~~  
20 ~~district will be incurred because this act creates a new crime or~~  
21 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
22 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
23 ~~the Government Code, or changes the definition of a crime within~~  
24 ~~the meaning of Section 6 of Article XIII B of the California~~  
25 ~~Constitution.~~